this contention. But in so doing he has had to disclose the immoral contract, and to concede that the defendant's retention of the car is a direct consequence of it. The point, therefore, arises must these circumstances defeat the plaintiff's claim to relief? It has been laid down in the fairly recent case of *Bowmakers Limited v. Barnet Instruments Limited*[1] that "as a general rule a man's right to possession of his own chattels will be enforced against one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract, or to plead its illegality in order to support his claim". I am of the opinion the present claim falls within this category.

Again it is, of course, well known that the reason the law will not enforce an illegal or an immoral contract is that it is contrary to public policy to do so. I can scarcely think I should be serving the interests of public policy if I were to hold that the defendant, who, I consider, is not entitled to the car on any other ground, should have it because she obtained possession of it as a result of an immoral association between her and plaintiff.

For these reasons I think the plaintiff's claim for possession of the car should succeed, and I give judgment for him accordingly. As regards the other articles claimed I feel complete doubt in view of the sparse and contradictory evidence on the matter as to whether they are in the defendant's possession, and I make no order on this part of the claim. Costs to the plaintiff.

Claim allowed.

LIM KHOON SEAH
v.
LIM LEAN TENG & ORS.

[O. C. J. (Buhagiar, J.) September 23, 1953]

[Penang — Civil Suit No. 237 of 1951]

Landlord and tenant — Licence — Notice of rights in respect of land — Whether licence is revocable.

The 1st defendant in 1949 by an agreement granted the plaintiff the right to collect all the squatters' rents, coconuts, fruits and other crops (except the rubber and fruits from trees grown after the signing of the agreement) on a piece of land for a term of 5 years commencing from May 1st, 1949 for an annual rental of $500. By an indenture made on April 10th, 1951 the 1st defendant conveyed the land in question to the 2nd, 3rd and 4th defendants, the purchasers. The plaintiff was ejected from the said land and in this case he asked for an injunction and for damages against the four defendants.

There were three points to be determined in the case: (i) whether the 1949 agreement between the plaintiff and the 1st defendant constituted a lease or a licence; (ii) whether the purchasers had notice of the plaintiff's right in respect of the land when they purchased it from the 1st defendant; (iii) if the said agreement was a licence, whether it was revocable or not.

Held: (1) the agreement constituted a licence (**Wijesuriya v. A.G. for Ceylon**[1] followed); (2) on the evidence, the purchasers had actual notice of the existing licence in favour of the plaintiff; (3) a licence granted for a fixed period could not be revoked before the expiration of the period for which it was granted provided that it was specifically enforceable in equity either in an action for specific performance or by way of injunction (**Hurst v. Picture Theatres**[4]) followed).

In the present case the licence was granted for a specified period and was also enforceable in an injunction and therefore was not revocable.

Cases referred to:—

(1) *Wijesuriya (H. E.) v. Attorney-General for Ceylon* (1950) A.C. 493.

(2) *Winter Garden Theatre (London) Ltd. v. Millennium Productions Ltd.* (1948) A.C. 173.

(3) *Wood v. Leadbitter* (1845) 13 M. & W. 838.

(4) *Hurst v. Picture Theatres* (1915) 1 K.B. 1.

(5) *James Jones & Sons Ltd. v. Earl of Tankerville* (1909) 2 Ch. 440.

INJUNCTION AND CLAIM FOR DAMAGES.

Sonni Pillai for the plaintiff.

C. D. D. Hogan for the 1st defendant.

Lee Ah Seong for the 2nd and 4th defendants.

Cur. Adv. Vult.

Buhagiar, J. : — By an agreement dated the 25th April, 1949 the 1st defendant granted the plaintiff the right to collect all the squatters' rents, coconuts, fruits and other crops (except the rubber and fruits from trees grown after the signing of the agreement) on a piece of land for a term of five years commencing from the 1st May, 1949 for an annual rental of $500. By an indenture made on the 10th April, 1951 the 1st defendant conveyed the land in question to the 2nd, 3rd and 4th defendants (hereinafter referred to as "the purchasers"), the 2nd and 4th defendants acquiring each two equal undivided fifths shares and the 3rd defendant one equal undivided fifth share of the land. The plaintiff was ejected from the said land and is now asking for an injunction and for damages against the four defendants. Since the institution of these proceedings the 3rd defendant has died.

There are three points to be determined in this case, namely (a) whether the agreement of the 25th April, 1949 between the plaintiff and the 1st defendant constitutes a lease or a licence; (b) whether the 2nd,

3rd and 4th defendants had notice of the plaintiff's rights in respect of the land when they purchased it from the 1st defendant; and (c) if the said agreement is a licence, whether it is revocable or not.

With regard to the first point, I hold on the authority of *Wijesuriya (H. E.) v. Attorney-General for Ceylon*[1], that the agreement constitutes a licence. That case was an appeal to the Judicial Committee of the Privy Council from the Supreme Court of Ceylon, where it was held that an agreement giving the right "to tap and take the produce of the rubber trees" on certain Crown lands amounted to a licence. Lord Simonds at page 506 said :—

"It appears to their Lordships that, while there are particular provisions which point in either direction, the decisive test is whether on its true construction the effect of the document is to give exclusive possession to the holder of the so-called permit; and adopting this test, they are of opinion that all that is granted by the document is the right to tap and take the produce of the rubber trees within a defined area together with such rights of occupation or possession and other ancillary rights as are necessary to make the primary right effective. They find nothing in the document which would exclude the Crown or its officers from entering on, and making such use of, the land as might be thought fit, subject only to the limitation that in doing so they must not derogate from the rights granted to the grantee. In their Lordships' opinion, therefore, the so-called permit was not a lease but a licence."

In the present case the circumstances are similar.

On the second point, that is whether when the land in question was transferred by the 1st defendant to the purchasers the latter had notice, actual or constructive, of the existing licence in favour of the plaintiff, I hold that there was actual notice. The 2nd and 4th defendants denied that there was such notice. The plaintiff gave evidence to the effect that in his presence the 1st defendant told the 2nd defendant of his (the plaintiff's) rights in this land. The 1st defendant also stated that he informed the 2nd defendant of the plaintiff's rights on at least two occasions and informed all the purchasers of the plaintiff's rights when they met at a solicitor's office for the purpose of executing the transfer. Apart from other considerations of fact I am satisfied that the version of the 1st defendant is the true one; from his demeanour in the witness box I consider that the 1st defendant is a reliable witness.

With regard to the third point, that is whether the licence was revocable at will, Mr. Lee for the 2nd and 4th defendants referred me to *Winter Garden Theatre (London) Ltd. v. Millennium Productions Ltd.*[2]. I do not consider that that case applies to the present case. What that case decided is that a licence for six months with an option to continue for a further six months at an increased rate, without an express provision for determination of the licence by the licensor, is not a perpetual one and can be terminated by giving the licensee a reasonable time to withdraw. In that case the opinion was expressed, *obiter*, that *Wood v. Leadbitter*[3] could no longer be regarded as law; it did not overrule *Hurst v. Picture Theatres*[4] according to which a licence granted for a fixed period for valuable consideration cannot be revoked before the expiration of the period for which it is granted provided that it is specifically enforceable in equity either in an action for specific performance or by way of injunction. In the present case the licence was granted for a period of five years commencing from the 1st May, 1949; the licence is also enforceable in an action by way of injunction (*James Jones & Sons Ltd. v. Earl of Tankerville*[5]), and therefore is not revocable.

The Suit must fail as against the 1st defendant with costs and succeed as against the 2nd and 4th defendants with costs. The 2nd and 4th defendants are to pay to the plaintiff the costs as between the plaintiff and the 1st defendant.

With regard to relief, the plaintiff is asking for an injunction and for damages. The Court has ample jurisdiction to grant the injunction asked for though, of course, it is in its discretion, if it so thinks fit, to award damages in lieu of relief by way of injunction. In view of the fact that the plaintiff has been precluded from exercising the rights under the licence since early 1951 and in view of the fact that the period of the licence is due to expire on the 30th April, 1954, I think this is a case in which it is proper to award damages. I direct that the amount of such damages be ascertained by the Registrar and the basis for ascertaining such an amount is to be the profit which the plaintiff would have made until April, 1954 reckoned on the average of the net profits made annually by the plaintiff during the period in which he exercised the rights under the licence.

Order accordingly.

LEE MIOW YUEN v. YEO HOON CHIONG.

[A. C. J. (Storr, J.) May 24, 1953]

[Muar — Civil Appeal No. 1 of 1953]

Landlord and tenant — Rent payable in advance — Onus of proving — Tender of rent less assessment — Whether a good tender — Sub-letting — Town Board Enactment No. 19 of 1921, s. 40.

The respondent's case in the Court below was briefly that: (i) appellant was his tenant of No. 2 Jalan Khatib, Muar, paying a monthly rent of $25; (ii) it was agreed that the rent was to be paid on the 1st of each month in advance; (iii) the rents of November and December, 1951, were unpaid on the 27th December, 1951, when he called on appellant and demanded payment; (iv) appellant tendered the amount of the rent less the amount of assessment he had paid on respondent's behalf, which tender respondent refused because the assessment had been deducted; (v) on 28th December, 1951, respondent